

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

United States of America,

Hon. Hugh B. Scott

v.

07-CR-003

John B. Yancey

Defendant.

**Amended
Memorandum & Order**

The Government seeks to have defendant detained pending trial in this case. In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing was held on February 2, 2007, and a motion for reconsideration of the detention determination came on to be heard on May 10, 2007. The defendant has filed a motion seeking correction and reconsideration of this Court's May 16, 2007 Memorandum & Order to the extent that Order states that the defendant's prior convictions include one for rape. In addition, the defendant argues that he has sufficient ties to the community. For the reasons set forth below, and in accordance with 18 U.S.C. §3142(e) and (g), defendant continues to be ordered detained pending trial in this case.

Charges Against Defendant

In summary, the defendant is charged by way of an indictment alleging that he was a felon in possession of a firearm namely a Savage Arms 12 gauge double barrel shotgun bearing no serial number and two rounds of ammunition, all in violation of Title 18, United States Code Sections 922(g)(1) and 924(a)(2).

Discussion

Pursuant to 18 U.S.C. §3142(g), the factors to be considered in the determination of a detention request are:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including--
 - (A) the person's character, physical and mental

condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

Findings & Conclusions

Upon consideration of the motion by the government for detention, the proffers made by the Government and the Defense, the motion made by the Defense for reconsideration of this Court's earlier determination that the defendant be detained, and after considering all of the factors set forth in 18 U.S.C. §3142(g), the court finds that detention is warranted based upon the following findings:

1. The Pretrial Services Report dated December 28, 2006 submitted by Dana Chase of the United States Probation Officer for the Western District of Missouri, and the subsequent memoranda from Patrick Cerminara, United States Probation Officer Assistant for the Western District of New York dated February 1, 2007, and April 27, 2007 are incorporated into the record.
2. The serious nature of the instant offense, namely, a felon in possession of a firearm and ammunition.
3. The defendant's prior felony convictions including second degree murder.
4. The defendant has an extensive record of other crimes and offenses including weapons possession, battery, contempt,

and criminal mischief.

5. The defendant has a history of short term residences.
6. The defendant violated Arkansas parole and it was revoked about one year after it was granted.

Based on the foregoing, the court finds by clear and convincing evidence that the defendant poses a risk of danger to the community, and that no condition or combination of conditions will reasonably assure against these risks during the pendency of these proceedings.

For the reasons stated above, it is hereby ordered that the defendant be detained pending trial of the charges against him.

It is further ordered that pursuant to 18 U.S.C. § 3142(i): (1) the defendant shall be committed to the custody of the United States Attorney General, or his designated representative, for confinement pending trial in a correctional facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; (2) that the defendant be afforded reasonable opportunity for private consultation with counsel; and (3) that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to a United States Marshall for the purpose of an appearance in connection with these court proceedings.

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
September 7, 2007